

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JULIETTE MONIQUE LUCERO,
for herself and as next friend of
JONATHAN D. LUCERO, a minor,

Plaintiffs,

v.

Civ. No. 02-0865 RLP/RHS

CITY OF ALBUQUERQUE, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

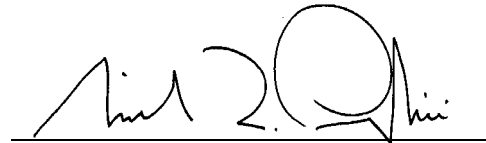
THIS action was filed on July 19, 2002, alleging violations of 42 U.S.C. § 1983, the United States Constitution, New Mexico Tort Claims Act, and negligence under New Mexico law. Plaintiffs were represented by counsel. Pursuant to the court's usual procedure in civil cases, a mandatory settlement conference was set for June 17, 2003. Plaintiffs' counsel appeared but Plaintiffs did not. In a subsequent letter to the court, dated July 7, 2003, Plaintiffs' counsel outlined the steps he had taken to locate his clients prior to the settlement conference, including hiring a private investigator who was unsuccessful in locating Plaintiffs. To date, Plaintiffs have contacted neither their counsel nor this court.

On July 25, 2003 Defendants filed a Motion for Summary Judgment [Doc. 30]. Plaintiffs' counsel then filed a Motion to Withdraw [Doc. 32] on July 30, 2003. That Motion was denied by the court on August 11, 2003 [Doc. 33] because the form of order submitted did not comport with Local Rule 83.8(b). Defendants have not moved for dismissal and Plaintiffs have not filed a Response to the Motion for Summary Judgment.

The court has the inherent right to dismiss a case pursuant to Fed.R.Civ. 41(b) for want of prosecution, even in the absence of a motion from the defendant. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962); *Stanley v. Continental Oil Co.*, 536 F.2d 914, 917 (10th Cir. 1976); *Thomas v. Rice*, 81 F.3d 173, 1996 WL 159947, **2 (10th Cir. 1996) (unpublished opinion). In light of the unsuccessful efforts taken by counsel to locate his clients and the upcoming jury trial, the motion for summary judgment notwithstanding, the court finds that this case should be dismissed pursuant to Fed.R.Civ.P. 41(b). By separate Order, Plaintiffs' counsel will be allowed to withdraw.

IT IS THEREFORE ORDERED that this case is dismissed pursuant to Fed.R.Civ.P. 41(b) and all pending motions are denied as moot.

IT IS SO ORDERED.



Richard L. Puglisi
United States Magistrate Judge
(sitting by designation)